IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2455 of 2001

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMINABAI ABDUL PADAR & 10 - Appellant(s)
Versus
SATYENDRASINH RANJITSINH DELETED AS PER COURT ORDER & 2 - Defendant(s)

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Appearance :

MR MEHUL S SHAH for Appellant(s) : 1 - 11.MR SURESH M SHAH for Appellant(s) : 1 - 11.
DELETED for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,
MS MEGHA JANI for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 20/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgement and award deated 20th June 2000 passed by Motor Accident Claims Tribunal (Main), Kutch-Bhuj, in Motor Accident Claim Petition No.27 of 1992, whereby the Tribunal has awarded a sum of Rs.5,55,000/- to the claimants along with 12% interest from the date of the application till realisation.

2.0 One Abdul Alimammad was working as Dock labour at Kandla Port. On 5.8.1991 said Abdul Alimammad was going to Kandla Port on his scooter. He was riding on the correct side of the road. At that time Trailer No.GQU 5227 came on wrong side and dashed with the scooter of said Abdul Alimammad. He sustained serious injuries and ultimately succumbed to the injuries. Under the circumstances the legal heirs of the said deceased Abdul Alimammad filed the aforesaid claim petition claiming compensation in the sum of Rs.20,00,000/-. The Motor Accident Claims Tribunal (Main), Kutch-Bhuj, after hearing the parties, partly allowed the said claim petition as mentioned hereinabove. Feeling aggrieved that the compensation awarded by the Tribunal is inadequate, the appellants-original claimants have filed the present appeal praying for enhancement of compensation.

3.0 Mr. Mehul S. Shah, learned Advocate for the appellants submitted that the Tribunal ought to have awarded compensation in the sum of Rs.20,00,000/- as claimed by the claimants.

3.1 Mr. Shah submitted that the deceased was earning Rs.3,200/- per month and he was of 35 years old. According to him, had he not met with the accident, his income would have gone upto Rs.31000/- per month on the retirement date of the deceased and therefore the Tribunal ought to have allowed the claim in toto.

3.2 He further submitted that the Tribunal has erred in taking the monthly income of the deceased at Rs.3000/- per month when there is a clear evidence on record showing that his income was Rs.3200/- per month. He further submitted that the deceased would have got promotion along with the persons who were appointed with the deceased.

3.3 He further submitted that Tribunal ought to have awarded Rs.15000/- under the head of loss to estate and Rs.5000/- for obsequial ceremonies. According to him the Tribunal ought not to have deducted one-third income towards personal expenses of the deceased. Learned Advocate further submitted that the deceased was only 35 years old and therefore a multiplier of 20 should have been adopted. Learned Advocate also submitted that the Tribunal ought to have awarded interest at the rate of 18% instead of 12%.

4.0 Ms Megha Jani, learned Advocate appearing for the respondents submitted that the Tribunal has considered all the aspects of the matter and therefore the appellants have not made out any case to cause interference in the matter.

4.1 She submitted that the compensation required to be paid should be on an estimate basis and the same ought to be based on income as on the date of the accident and it may not be strictly on actual loss which may be caused to the family.

5.0 We have heard the learned Advocates for the respective parties and perused the documentary evidence including the judgement of the Tribunal.

6.0 At Exhibit 48 the claimants have produced the documentary evidence in respect of his salary. The pay slips of the deceased were produced on record at Exhs.49 to 51. The pay slips of co-employee have been produced at Exh.52 to 55. A statement has been produced at Exh.68 according to which by January 2000 his salary would have been R.9099/-.

6.1 Looking to all the facts and circumstances of the case the Tribunal has taken the income of the deceased at Rs.4500/- per month. Out of this, the tribunal has deducted one-third towards his personal expenses and the monthly loss of dependency was taken at Rs.3000/- per month. Therefore the yearly loss came to Rs.36000/-. The tribunal has taken

multiplier of 15 and arrived at the compensation in the sum of Rs.5,40,000/-.

6.2 The Tribunal has further awarded a conventional amount of Rs.15000/- making the total compensation of Rs.5,55,000/-. The Tribunal has also awarded interest at the rate of 12% on the aforesaid amount.

7.0 As far as income of the deceased is concerned, we are of the opinion that the Tribunal has rightly estimated the income of the deceased at Rs.4500/- per month and the learned Advocate for the appellant has failed to point out anything from the record to take a different view of the matter as the estimate for compensation is to be based on the date of accident.

8.0 However, looking to the number of dependent family members of the deceased, we are of the opinion that the Tribunal ought to have adopted unit method instead of deducting 1/3rd amount and calculating the dependency benefit. In the case of Saruyaben Vs. Ataullakhan, reported in 2001(3) GLR 2029 it is held that in case of death of head of the family leaving behind five members, 1/4th instead of 1/3rd may be deducted from the income towards what he would have spent on himself. In the present case the family of the deceased, 2 units for the deceased, 2 units for his wife, 1 unit each for minor children and two units each for mother and widowed sister, which would come to 14 units. Dividing the 14 units into two and taking the income at Rs.4500/- per month, per unit it

would come to Rs.643 i.e. Rs.650/-. After deducting Rs.650 from Rs.4500/-, the net loss would come to Rs.3850/- and yearly loss would come to Rs.46200/-. Looking to the age of the deceased i.e. 35 years, the multiplier taken at 15 by the Tribunal is just and proper. Therefore, the total dependency benefit would come to Rs.6,93,000/-.

9.0 Under the head of conventional amount, the Tribunal has awarded a sum of Rs.15000/-. Considering the overall facts and circumstances of the case we are of the view that an amount of Rs.35000/- under this head is just and proper.

10.0 In the premises the appeal is partly allowed. The appellants shall be entitled to get additional compensation of Rs.1,73,000/- (i.e. Rs.7,28,000-5,55,000=1,73,000) along with interest at the rate of 9% per annum from the date of application till realisation. However, it is clarified that we do not interfere with the rate of interest at 12% per annum as awarded by the Tribunal on Rs.5,55,000/-. The judgement and award of the Tribunal is modified accordingly. Appeal is allowed to the aforesaid extent. No order as to costs. Decree to be drawn accordingly.

[ANIL R. DAVE., J.]

[K.S. JHAVERI, J.]

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